

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO.758 OF 1989.

Date of Decision:-05-12-1995.

For Approval and Signature

THE HON'BLE MR. JUSTICE N.N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. Mr. M.R. Chhaya, Advocate, for the petitioner.  
Though the resply has been filed, none appeared for the respondents.

Coram:-N.N. Mathur, J.

Date:--05-12-1995.

Oral Judgment:-

By the impugned Resolution dated 20-9-1988 the respondent Una Municipality decided to allot the land out of Survey No.30 to certain employees of the respondent Municipality by way of sale. The petitioners who are also the employees of the respondent - Municipality, say that the said item was not on the agenda in the meeting of 20-9-1988 it was brought on agenda in the meeting itself and was adopted. By the said resolution the land has been allotted by sale at throw away price of Rs.6-00 per sq.mtr. to some of the employees of the respondent Municipality. It is pointed out that even before the

resolution was adopted certain applications of certain employees were kept ready for allotment of the land. It was not known to any other employees and as such they were deprived of the benefit of the resolution. It is also pointed out that the meeting was convened under chairmanship of one Shaikh Alimohmad Abdul Raheman who has resigned on 8-7-1988 had continued on account of political manoeuvre. It is also stated that in order to circumvent the provisions of Section 65 of the Gujarat Municipalities Act, 1963(hereinafter referred to as the Act) valuation of the land was arranged in a manner that it becomes less than Rs.1 lac. It may be stated that for sale of the land for above Rs.1 lac, under the provisions of the Section 65 of the Act, permission is required to be obtained from the State Government. It is further pointed out that even as per official valuation rate of the land in question is valued at Rs.25/- per sq.mtr. by the competent authority. According to the petitioners valuation of the land in question is more than Rs.30 lacs. In para 6 of the petition it is stated that pursuant to the impugned resolution documents with respect to sale of the land were executed but the Sub-Registrar, Una has impounded those documents for the reason of extremely low valuation.

2. The allegations made in this Special Civil Application has gone unrebutted as no reply to the Special Civil Application has been filed. Mr. Chhaya learned Advocate appearing for the petitioner submits that the municipality is the trustee of the properties vested in it and it cannot act otherwise than in accordance with law. He has further submitted that even if it is assumed that the Municipality can dispose of the land by private sale, then it requires to be disposed of in accordance with law and it cannot dispose of at random by favoring only few favorite employees. In this regard he relies upon the decisions of this Court reported in(1) AIR 1984 GUJARAT 134 and (2) 1995 (2) GLH 701

3. I have considered the contentions of the learned advocate for the petitioner and also perused the authorities cited. The Municipal Corporation has been given power to sell, lease or otherwise transfer any movable and immovable property which have become vested in or been acquired by it and so far as is not inconsistent with the provisions and purpose of this Act. Sub-section 2 of Section 65 of the Act provides that in case of sale of land under sub-section (1) of Section 65 of the Act, the market value of which exceeds one lakh of rupees, the previous permission of the State Government is required. It is of course true that in the present case there is no material to show that the value of the

subject land exceeds to Rs.1 lakh. However, the fact as stated in paras 6 and 7 of the petition that the documents executed in pursuance of the resolution have been impounded by the Registrar for the reason of low valuation and further that as per the official valuation the rate of the land in question is valued is at Rs.25/per sq.mtr. by the competent authority, has gone un rebutted. It can be safely concluded that the price of the subject land is more than Rs.1 lakh. There can be no hesitation in concluding that deliberately the price of the land was fixed in a manner that it remains below rupees one lakh. It is also significant to notice that such a resolution was adopted in haste and even the applications for allotment of plots were kept ready with the Municipality before the resolution was adopted.

4. In view of the aforesaid, the impugned resolution dated 20-9-1988 deserves to be quashed and set aside and is accordingly quashed and set aside.

5. It will be open for the Una Municipality to adopt afresh resolution for allotment of land by sale to the employees of the respondent Municipality. The respondent - Municipality still however is required to act in a fair manner for which they must frame certain schemes giving opportunity to all keeping in view that such a plot is given to the only needy persons. They also require to obtain approval of the Director of Municipalities before such resolution is adopted. The price of the land should be fixed as per prevalent practice in the State Government.

6. This Special Civil Application is allowed as indicated above. The resolution dated 20-9-1988 is quashed and set aside. The documents executed in pursuance of the resolution dated 20-9-1988 are declared null and void. Rule is made absolute. There shall be no order as to costs.

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